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September 21, 2012

VIA ECF

Honorable Dennis M. Cavanaugh, U.S.D.J.
United States District Court
United States Post Office and Courthouse Building
Newark, New Jersey 07101-0999

Re: *In re Schering-Plough Corp. ENHANCE Securities Litigation.*,
Civil Action No. 08-397 (DMC) (JAD)

In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation,
Civil Action No. 08-2177 (DMC)(JAD)

Dear Judge Cavanaugh:

This firm, along with Co-Lead Counsel, represents Lead Plaintiffs in the above-referenced securities class actions. I am writing to respond to Mr. Wells' belated request to adjourn the November 13, 2012 trial date of these actions. For the reasons set forth below, an adjournment of the trial of these (now four year old) cases is simply not appropriate and would prejudice plaintiffs.

First, it should come as no surprise to anyone that the Court has set a November 13 trial date. In February of this year, the Court informed the parties that these cases would proceed to trial in the fall, specifically in November. *See* Feb. 8, 2012 transcript at 31-32. In fact, in response to a question by Mr. Wells to the Court regarding a "real date" for trial, the Court clearly stated at that time that a fall trial date was "real," that everyone should plan accordingly and that the Court had no intention of pushing it "back another six months" once it was scheduled. *Id.* Counsel for Lead Plaintiffs have worked diligently to manage their professional and personal calendars to meet this time frame as directed by the Court.

Second, at the time the Court indicated that these cases would proceed to trial in the fall, Mr. Wells had not yet entered an appearance in the Bank of America case. He only later entered that case knowing full well that Your Honor had already targeted November 2012 for trial in these cases, and the Bank of America case had been long scheduled for trial on October 22, 2012.

Third, this Court formally noticed these cases for trial on November 13, 2012 in August 2012 and told the parties at the settlement conference that if the Bergrin matter (which only became an issue after August 2012) somehow resolved itself or moved, that we were next on the Court's trial list. Plaintiffs have worked to be ready for trial in November – irrespective of the

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Bergrin trial – and do not understand why defendants did not plan to do the same or why Mr. Wells is raising this issue only now, a full week after the Bergrin trial was adjourned by the Court.

Fourth, by Mr. Wells' own admission, the Bank of America case might settle, eliminating any possible conflict between the two dates. In fact, it bears noting that Bernstein Litowitz is Co-Lead Counsel in both of these cases and is Co-Lead Counsel in the Bank of America case. While we do not believe that the Bank of America case should delay the trial of these actions, Bernstein Litowitz is available to further provide the Court with a status update as to the trial in that case, if necessary.

Fifth, moving the trial date of these actions to some unspecified date in 2013 would prejudice Lead Plaintiffs. These cases are, as noted, four years old and some of the Lead Plaintiffs are based in Europe. Those Lead Plaintiffs and the other institutional Lead Plaintiffs have planned for a November 2012 trial and to move it now because of a potential conflict of a single counsel for Defendants, would upend not only the Lead Plaintiffs schedules, but the schedules of the numerous lawyers who have worked diligently to meet the Court's express intentions regarding these cases. Moreover, scheduling the trial of these actions to sometime after the Bergrin trial means that these cases – despite being ready for trial now – will not be tried until at least the spring of 2013. A delay that long is clearly prejudicial and serves no purpose other than delay for the sake of delay.

Finally, we wish to be clear that we are not insensitive to Mr. Wells personal plans regarding his daughter's wedding. We simply believe that there are much better ways to accommodate his attendance at that event than to move the trial of these actions to some unspecified start date, sometime *after* the end of 2012. For one, the wedding is on a Saturday, and we would be more than happy to take a recess for a period of time before then to allow Mr. Wells sufficient time to transition from trial mode to wedding mode. But, neither weddings, nor anniversaries, nor other personal or professional commitments of counsel ought to prevent these important cases from proceeding to verdict before the end of this calendar year. All counsel on plaintiffs side have similar commitments around the holidays, including anniversaries, that have to be managed.

Thank you for your continued attention to this matter. If the Court has any questions, we are available at your convenience.

Respectfully submitted,

CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO

/s/ James E. Cecchi

JAMES E. CECCHI

cc: All Persons on ECF Service List (w/encl.)